

Journal of Civil Rights and Economic Development

Volume 26
Issue 1 *Volume 26, Fall 2011, Issue 1*

Article 3

September 2011

Lost in Translation: Notario Fraud - Immigration Fraud

Mary Dolores Guerra

Follow this and additional works at: <https://scholarship.law.stjohns.edu/jcred>

Recommended Citation

Mary Dolores Guerra (2011) "Lost in Translation: Notario Fraud - Immigration Fraud," *Journal of Civil Rights and Economic Development*: Vol. 26 : Iss. 1 , Article 3.

Available at: <https://scholarship.law.stjohns.edu/jcred/vol26/iss1/3>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Journal of Civil Rights and Economic Development by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

LOST IN TRANSLATION: *NOTARIO* FRAUD – IMMIGRATION FRAUD

MARY DOLORES GUERRA*

PREFACE

How does one calculate the human cost of any social evil? How does one measure lost hopes, lost dreams, or the loss of community ties, employment or educational opportunities? How does one measure emotional and mental suffering? All these factors play a part in the human cost of notario fraud. This article tells the story of the Lopezes who not only fought back but also won a judgment against a notario. Their story is representative of countless immigrants who have been victimized by notarios and shows the strength of the human spirit. Unfortunately, many victimized immigrants do not know what, if any, recourse they have against notarios. This is one family's story.

The Lopezes were eager to tell their story. We sat for several hours together in their home. I felt honored being there. I listened intently; they detailed their joyful experiences, ones of hope and accomplishments and also their painful experiences that dealt with notarios. At times the sorrow showed on their faces through their words and tears. After my interview with the Lopezes, Rosa, the mother, and I hugged as we said good- bye.¹

* Assistant Professor of Law, Phoenix School of Law. J.D., University of California, Los Angeles. This article is dedicated to the immigrant families who have suffered at the hands of notarios, especially the Lopez family. Without their willingness to share their story so that others would not suffer the same fate, this article would not have been possible. I would like to thank the Honorable Cruz Reynoso for his suggestion to write a piece about notario fraud for my professional responsibility paper while at UCLA School of Law, Gloria Castro for referring the Lopez family to me, and Milagros Cisneros for her encouragement. I also want to thank my research assistants, James Robinson, Shawnta Mosley, Veronica Lucero and Marisol Angulo, who diligently worked on this project. I am indebted to the following people for the information and support they offered: attorneys Nic Surriel, Delia Salvatierra, David Zetoony and Professors Maureen Kane, Elizabeth Prendo, Lauren Gilbert, Evelyn Wilson, Whitney Graham-Beard and Wendy Greene for their assistance. I also want to thank my family, my friends and Phoenix School of Law colleagues for their support.

¹ Interview with the Lopez family, victims of notario fraud, in Glendale, California (Oct. 20, 1998) [hereinafter, Lopez Interview]. Although the family gave me permission to use their real names, I have decided to use pseudonyms to protect their identities. I remained in contact with Rosa until spring 2000; she kept hoping that the federal immigration law would change and allow them to stay. Since that time, I have tried unsuccessfully to reach them. The family had hoped that telling me their story might help

We looked at each other, our faces were tear-stained; I felt deep compassion for her and her family.² She said in a firm but gentle voice, "Si necesitas algo, hableme, aquí estoy para servirle." If you need anything, call me, I am here to help you. She sent me home with warm homemade green tamales wrapped in banana leaves; her generosity astounded me. I had just spent several hours with her family. They were about to lose everything they had: the community they worked and lived in, their material possessions, a stable home and educational opportunities for their children. The Lopezes were scheduled to appear before an immigration judge to begin voluntary departure proceedings, which the Lopezes had reluctantly requested and that the court ultimately granted.³ Rosa and her family offered me their unconditional assistance and I was powerless to help them. The situation seemed to me like a divine comedy, surreal. I had entered the legal profession to assist people like the Lopezes, but in the end, it was Rosa and her family's story that will help the legal profession to better understand notario fraud.

INTRODUCTION

"[Notario fraud is] an issue that's been under the radar for a long time—far too long."

ABA President Stephen N. Zack⁴

The notario preys on immigrants, knowing that they are one of our society's most vulnerable members. The notario also knows that once the immigrant is defrauded, he or she has minimal, if any, recourse against the notario. If the immigrant confronts the notario, the notario may goad the immigrant to call the police, intimidating the foreign national that the next

their immigration case. It did not. They also hoped that in telling their story they might help other immigrants to avoid the same fate. I am hopeful that it will.

² At that point, I knew that the Lopez story would affect my life in a way that I had not anticipated. I would not view the world with the same eyes that I had before meeting them. Growing up surrounded by immigrants, I carried deep love for these people. I watched my parents—who had also been immigrants prior to becoming naturalized citizens in 1952—serve the immigrant community with love and patience. Now it was my turn. Although I felt powerless to help the Lopezes at the time, I knew that telling their story could perhaps help others avoid falling under the spell of the notario in the future.

³ Removal proceedings are what the Immigration and Naturalization Service (INS) used to call "deportation proceedings." (citation)

⁴ G. M. Filisko, *Notriety for Notarios*, ABA JOURNAL, Dec. 1, 2009, http://www.abajournal.com/magazine/article/notoriety_for_notarios/; In 2010, Zack created the Commission on Hispanic Legal Rights. The Commission will hold public hearings and study the legal issues that arise. The findings will be placed into a report. See Fabiola Sanitago, *American Bar Association to Create Commission on Hispanic Legal Rights*, PALM BEACH POST, Aug. 7, 2010., available at <http://www.palmbeachpost.com/money/american-bar-association-to-create-commission-on-hispanic-845757.html>

call that the notario will make is to “la migra.”⁵ Most immigrants will not call the police;⁶ some might report notario abuse to non-profit immigration services after seeking legal services for botched immigration work⁷, but the problem, for the most part, stays “under the radar.”⁸

Although states have implemented recourse against notario fraud, it is mild and ineffective. Federal attempts to remedy notario fraud lack teeth and notarios know it. As President Obama and Congress assert prospective immigration reform in the near future, notarios falsely claim they can assist immigrants seeking immigration services for a fee.⁹ To end notario fraud, federal and state action is desperately needed. Shedding light on this insidious crime is one part of the solution, but now, more than ever, we should seek a comprehensive notario fraud law that protects the public, including immigrants, and punishes notarios.

Most people have little to no knowledge of notario fraud.¹⁰ In fact, many people, including immigrants, do not understand the difference between a Latin Notary, *notario publico*, in Latin American countries and the notary public in this country. The Latin Notary is both an attorney in his or her native country and holds a quasi-judicial position. The translation of names is identical, but the power and respective capacities is not. This mistaken belief coupled with deceptive notario practices leads many immigrants into serious legal and financial problems, possibly jeopardizing any prospective immigration relief they may have had and at exorbitant costs. Worse still is the notario who dupes the unaware foreign national into believing that he or she has a viable claim to stay in the country, where none exists.

In examining notario fraud in the United States one first needs to understand the differences between a Latin Notary, a United States (“U.S.”)

⁵ Victor C. Romero, “Aren’t You Latino?”: *Building Bridges upon Common Misperceptions*, 33 U.C. DAVIS L. REV. 837, 843 n.14. “La migra” is used by Latino immigrants to refer to the U.S. Department of Homeland Security, formerly known as Immigration and Naturalization Services (“INS”). See also US Immigration Support, INS (Immigration and Naturalization Services), available at <http://www.usimmigrationsupport.org/ins.html>

⁶ Many immigrants familiar with corruption and bribery in their home countries do not trust the police. See Key Survey Results, *Under Siege: Life for Low Income Latinos in the South*, Southern Poverty Law Center, Apr. 2009, available at <http://www.splcenter.org/publications/under-siege-life-low-income-latinos-south/7-key-survey-results>.

⁷ Telephone conversation with immigration attorney, Delia Salvatierra on November 23, 2011.

⁸ Filisko, *supra* note 4.

⁹ See *supra*, note 7.

¹⁰ Milagros Cisneros, H.B. 2659: *Notorious Notaries—How Arizona Is Curbing Notario Fraud in the Immigrant Community*, 32 ARIZ. ST. L.J. 287 (2000); Anne E. Langford, *What’s in a Name?: Notarios in the United States and the Exploitation of a Vulnerable Latino Immigrant Population*, 7 HARV. LATINO REV. 115 (2004).

notary public and a notario.¹¹ The Latin Notary is a private attorney in Latin American countries who is also a public official holding a quasi-judicial position.¹² Latin Notaries authenticate individual signatures and the document itself.¹³ Most people in the United States are familiar with the U.S. notary public's role; generally authenticating individual signatures of persons signing documents. This article defines the notario as any person who advertises as a "notario," who may or may not be a notary public in the United States, misrepresenting him or herself as a Latin Notary intending to deceive immigrants because of name mistranslation.¹⁴

In most Latin American civil law countries, a notary public has responsibilities and credentials vastly different from a United States notary public.¹⁵ Pedro Malavet states that the Latin Notary is the "counsel for the situation," who acts as a non-advocate and gives impartial advice to all parties of the transaction.¹⁶ In Latin America, a notary receives from their respective country the "exclusive authority to perform certain legal functions and to impart the required formality to specified legal transactions."¹⁷ In other words, the Latin Notary is a private attorney who impartially counsels and a public official who authenticates private transactions in "a public document that is publicly enforceable."¹⁸ Malavet further states that the Latin Notary is a person of significant importance, while the notary public in the U.S. is one of very little importance, because: (1) the Latin notary holds his or her office permanently, so long as he or she remains in good standing; (2) the civil law state appoints a limited number of vacancies, depending on the vacancy available in its region; (3) Latin notaries must also serve an apprenticeship with a Latin notary for several years, depending on the jurisdiction.¹⁹ The Latin notary's office

¹¹ "Latin Notary" denotes a notary public in Latin America. Although notary publics in most civil law countries have similar responsibilities and credentials as the Latin notary, this piece will solely cover the notary public certified in Latin America.

¹² For a thorough discussion of the Latin Notary, see Pedro A. Malavet, *Counsel for the Situation: The Latin Notary, a Historical and Comparative Model*, 19 HASTINGS INT'L & COMP. L. REV. 389 (1996). [hereinafter Malavet I]. See also Malavet, *The Foreign Notarial Legal Services Monopoly: Why Should We Care?*, 31 J. MARSHALL L. REV. 945 (1998). [hereinafter Malavet II]; Cisneros, *supra* note 10, at 294-99; see also Langford, *supra* note 10, at 116.

¹³ Cisneros, *supra* note 10, at 294-95; see also Langford, *supra* note 10, at 116.

¹⁴ Cisneros, *supra* note 10, at 294-95; see also Langford, *supra* note 10, at 116.

¹⁵ See JAMES G. APPLE & ROBERT P. DEYLING, A PRIMER ON THE CIVIL-LAW SYSTEM I (1995) "Civil law is the dominant legal tradition today in most of Europe, all of Central and South America, parts of Asia and Africa, and even more some discrete areas of the common-law world (i.e., Louisiana, Quebec, and Puerto Rico)."

¹⁶ See Malavet I, *supra* note 12, at 399.

¹⁷ *Id.* at 391.

¹⁸ *Id.*

¹⁹ *Id.* at 391-92, 433, 439.

employs many attorneys, who act in his or her capacity.²⁰

The U.S. notary public, although a public official, unlike the Latin Notary, rarely makes a living performing his or her official duties.²¹ The National Notary Association (“NNA”) defines a notary public as “a state-appointed official who administers oaths and serves as an impartial witness when important documents are signed. To confirm that a document and its signatures are authentic, the notary affixes his or her signature and official seal to it.”²² Further,

A Notary Public is very different from a [Latin] *notario public*. Unlike the high-ranking *notarios publicos* of Latin America, the Notary Public of the United States does not prepare immigration documents or hold a highly prestigious position equivalent to that of a judge. The [United States] Notary is not an attorney and may not prepare legal documents or give advice on immigration or other legal matters (unless the [United States] Notary also happens to be a member of the bar).²³

Each state in the United States codifies its requirements for a notary public. In California, for example, the qualifications for a notary public are that every person appointed shall (a) be a legal resident at the time of appointment; (b) be at least 18 years of age; and (c) successfully complete a written state exam.²⁴ In Arizona, the fee to become a notary public is \$43.00. The qualifications are: (1) must be at least 18 years of age; must be an Arizona resident and since 2007, (2) must also be a U.S. citizen or legal resident (3) must not have a felony conviction for a felony unless his or her civil rights have been restored, or a conviction for a lesser offense involving moral turpitude or of a nature that is incompatible with the duties of a notary public.²⁵

Here, in the United States, a *notario* refers to a person who may or may not be a U.S. notary public who deceives clients, in particular immigrants from Latin American countries, into believing he or she is a Latin Notary.²⁶ The *notario* uses the term “*notario público*,” as a preying mechanism upon

²⁰ Author’s personal experience in Mexico while working with Latin Notary in August 2004.

²¹ Milton G. Valera, *The National Notary Association: A Historical Profile*, 31 J. MARSHALL L. REV. 971, 977 (1998).

²² National Notary Association, *What is a Public Notary?*, available at: <http://www.nationalnotary.org/UserImages/WhatNotary.pdf> (last visited 7/12/2009).

²³ *Id.*

²⁴ CAL. GOV. CODE § 8201 (2011). See also the National Notary Association website at <http://www.nationalnotary.org> for a listing of the states’ requirements.

²⁵ See ARIZ. REV. STAT. §§ 41-328 & 41-312 (2011).

²⁶ National Consumer Law Center: Immigration Consultant Fraud, available at: http://www.consumerlaw.org/initiatives/osi/miscellaneous/consultant_fraud.shtml (last visited 7/12/2009).

immigrants' vulnerabilities and desperation.²⁷ The notario usually advertises in the Spanish media, newspaper or television, making promises of obtaining permanent residence, and sometimes even citizenship.²⁸ The notario "takes advantage of an individual's desperation, inability to speak or read English, and unfamiliarity with the [U.S.] legal system to persuade the individual to pay money for" the notario's immigration services, charging "exorbitant fees. . .and then doing nothing."²⁹ Most immigrants will not report the fraud for fear of deportation. Notarios can draw in immigrants who seek legal status because the notarios are easily accessible, on nearly every street corner in any major city, and bilingual.³⁰ According to the American Bar Association's ("ABA") Immigration Commission "unscrupulous" notarios use false advertising and fraudulent contracts; "unfortunately, the notario is usually identified after the fact, when an immigrant has already suffered an adverse event as a result of the consultant's services (*e.g.*, a denial of temporary protective status, or a removal order), and seeks the assistance of a licensed immigration attorney."³¹

The ABA seeks to end notario fraud and provides helpful information to attorney assisting immigrants who are dealing with the aftermath of notario fraud.³²

²⁷ For a thorough discussion on notario fraud and other non-attorney service providers, see Deanne Looi, Kathleen Michon, & David Dinnecone, *Fraudulent Notarios, Document Providers, and Other Nonattorney Service Providers: Legal Remedies for a Growing Problem*, CLEARINGHOUSE REVIEW, Nov.-Dec. 1997, at 328.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Dianne M. Solis, *Many Immigrants Seeking U.S. Citizenship Exploited by Consultants on Mexico Border*, WALL ST. J., Sept. 19, 1984, available at 1984 WL-WSJ 204251.

³¹ See American Bar Association Commission on Immigration, Fight Notario Fraud, at http://www.abanet.org/publicserv/immigration/notario/fight_notario_fraud.shtml; See *supra* note 4, ("In 2008, the Immigration Commission launched Fight Notario Fraud, a project to educate immigrants about how to identify and avoid fraudulent activities by notarios, and where to get help if they have been defrauded. The commission also is awarding educational grants to organizations working at ground level in immigrant communities.

'We have on our website materials from cases all over the country' and an e-mail discussion group 'so people can communicate about the problem,' says Claire R. Trickler-McNulty, a staff attorney for the commission. 'We also have a pro bono matching project. If people have been victimized, we tell them where to report it and, if possible, refer them to a pro bono attorney who may take their case.'").

³² *Id.*

I. THE HUMAN COST

*A. The Lopez Family*³³

The Lopez family was originally from Tecalitlán, Jalisco, Mexico. Mr. Rigoberto Lopez, the father, first came to the U.S. at the age of 25.³⁴ He and his brothers traveled to and from Mexico to support their family in Mexico, until Rigoberto married Rosa in 1980 in Jalisco, Mexico. They had two children: Luis Miguel was born July 1981 and Andrea in October 1985, both born in Jalisco, Mexico. In 1989, the Lopezes immigrated permanently to the State of California. Since their arrival in the states, the parents have worked full-time and paid all their taxes. They had a checking account to pay their bills; they also paid into a social security system from which they will never be able to collect any monies when they retire. Since first coming to the U.S., Rosa and Rigoberto had a pressing need to “*arreglar sus papeles*.” To fix their papers.³⁵

The Lopez family sought to adjust their immigration status through the services of Jose Velez, of Velez & Sons. This private immigration service was based in Las Vegas, NV and the Lopezes visited Las Vegas at least five times in the mid to late 1980s to ensure that Velez prepared their documents. They missed several days of work without pay, at times drove a car that was in badly need of repair, and spent money that was in short supply. Much to their astonishment, Mr. Velez was convicted of conspiracy to file false applications and false statements with the Immigration and Naturalization Services (“INS”).³⁶ As a result of their

³³ Their story is representative of countless immigrants who have been victimized by notaries.

³⁴ “Lopezes” denotes the family; it is meant to represent Mr. and Mrs. Lopez’s thoughts and ideas on account of what transpired.

³⁵ This also means in the vernacular that the immigrant is currently in the immigration process. See *supra* note 7.

³⁶ *United States v. Velez*, 113 F.3d 1035 (9th Cir. 1997). INS is now USCIS (US Citizenship & Immigration Services); see also, George Ramos, *INS Raids Latino Group’s Office in Alleged Fraud*, L.A. TIMES, Nov. 21, 1990, at A3, available at http://articles.latimes.com/1990-11-21/news/mn-4680_1_immigration-consultant; See also, Jose Velez:

In 1995 an INS Legalization Fraud Task Force investigated Velez and uncovered significant evidence of his illegal activity. On May 8, 1995, a jury in Las Vegas found Velez guilty of 10 counts of immigration fraud. According to the Department of Justice:

Velez was convicted of conspiring with others to file false legalization applications with the [INS] on behalf of thousands of unqualified alien applicants. He was also convicted of actually filing false legalization applications on behalf of nine unqualified aliens.... The legalization applicants false[ly] claimed that the aliens had performed certain required seasonal agricultural services in the United States or falsely claimed that the aliens had resided continuously and illegally in the United States since before January 1, 1982. The purpose of these applicants was to obtain ... a Temporary Resident Card. The law would then permit the applicant to apply for a Resident Alien Card, commonly known as a ‘green card,’ which permits an alien to reside permanently in the United States and to later apply for United States citizenship. The applications were filed with the [INS]

association with Velez, the Lopezes' immigration applications were considered invalid along with countless others. The Lopezes were never charged with any crime. They felt used by Velez, lied to, and ripped off. After expending time, energy, and money, they received nothing in return. Disheartened and desperate, but not hopeless, on the advice of a friend, Mr. and Mrs. Lopez reached out to Gaston Corral, of Consultorio Internacional in Los Angeles. The Lopezes turned to him for help, and he initially welcomed them with open arms.³⁷

The Lopez family initially sought to renew their work permits with Gaston. They informed Gaston that their immigration petitions had been denied because of their involvement with Velez. Gaston assured Rosa and Rigoberto that they did not need to fear INS. Moreover, he claimed that they did not need to renew their work permits because he could get their status adjusted to legal permanent residents, "100% guaranteed," he reassured them.

Gaston boasted of his credentials. He claimed he was a *notario publico* who had over thirty years experience filing applications with the INS, which gave him the most credibility. He claimed to have previously worked as an immigration agent and asserted that he had access to INS files on his computer. He asserted that he studied law in Mexico, which gave him knowledge of the law, but he did not obtain his law degree because it was not needed for the work he did. Rosa and Rigoberto stated, "*Estabamos muy impresionados.*" We were so impressed.

Gaston dazzled Rosa and Rigoberto with his confidence, like Svengali, convincing them that he could get their immigration status adjusted to that of legal permanent residents. The economic cost ultimately was more than \$3,000. The family naively believed Gaston could easily adjust the family's

pursuant to a legalization program enacted by Congress, the Immigration Reform and Control Act, which went into effect in 1986.

Velez was sentenced to 75 months in prison. He subsequently appealed his sentence, claiming that the district court had incorrectly applied the Sentencing Guidelines. The case was remanded for re-sentencing, and Velez's prison term was reduced to 57 months.

Available at, <http://www.discoverthenetworks.org/individualProfile.asp?indid=1180>

³⁷ Mr. Corral will be addressed as Gaston. The Lopezes called him by this name—even his business cards are imprinted with only "Gaston"; See also, *Consultant Accused of Misleading Immigrants*, L.A. TIMES, Dec. 10, 2001. (A Moorpark immigration consultant has been accused of engaging in false and misleading advertising and unlawful business practices, according to the Ventura County district attorney's office.

The district attorney's Consumer and Environmental Protection Unit filed a complaint last week against Gaston Corral and Consultorio Internacional Inc. It alleges the defendants made misleading guarantees that they could obtain legal residency for customers, gave legal advice without being qualified to do so, failed to give customers written contracts as required by law and failed to provide services for which they were paid. *Id.*

status through a political asylum petition;³⁸ unfortunately, their process was anything but easy. Rigoberto and Rosa were both monolingual Spanish speakers, but signed an English language contract with Gaston.³⁹

After seven years of waiting, their asylum petition was denied in February 1997. The INS refused to grant the Lopezes residency based on their political asylum application, but it did give them work permits pending the final result of their case in immigration court. Gaston took credit for obtaining the work permits for the Lopezes; they later learned that the INS only granted the work permits because the Lopezes had not been interviewed within the required number of days of filing their application. The Lopezes did not understand the law and instead saw Gaston as the savior.

The Lopezes later received a Notice to Appear before the Executive Office for Immigration Review ("EOIR") (immigration court).⁴⁰ As part of their agreement with Gaston, the Lopezes expected to receive legal representation. Gaston claimed he had attorneys who worked for him. Gaston said he would arrange for an attorney to meet the Lopezes on the day of their court date. They waited for the attorney but he never came. The judge gave the Lopezes an extension of time and another court date. The Lopezes called Gaston who sounded perturbed and upset that the attorney did not show. Gaston profusely apologized and assured them that an attorney would attend the next hearing.

At their next court date, the Lopezes arrived at the courthouse at 6 a.m., two hours before the hearing. Not knowing what the attorney looked like, at least this time they had a name: Guy Grande. The entire family was present; they split up to cover the different entries to the building, desperately looking for a man whom they had never met and who had never reviewed their case. Twelve-year old Andrea remembered feeling scared and cold, she hugged her chest as she described the details of the

³⁸ Gaston would base the claim on the economic hardship that they would face if they were deported back to Mexico, this claim, Gaston assured them was guaranteed to gain them their right to stay in the U.S. Gaston also assured the Lopezes that he had gotten many immigrants their residency through this route and the Lopezes trusted that Gaston knew what he was doing. They agreed to allow him to represent them. This was a bogus claim, which ultimately cost the Lopezes more than the money they paid to Gaston. The Lopezes stated that at various times they suggested to Gaston that he should file a claim under the seven-year law, but Gaston would try to dissuade them, stating that they needed to go through the political asylum process to get their legal residency. He also said that if the Lopezes did not heed this advice, he would go to the judge and personally cancel their case, "and what Jose Velez did to you would pale in comparison."

³⁹ At that time, Gaston did not give them a copy of the contract translated in Spanish. He later submitted a translated copy along with his statement to the judge in small claims court.

⁴⁰ Immigration Court is known as The United States Department of Justice Executive Office for Immigration Review.

dreadful morning. The feeling of anxiety rose among all the Lopezes as they unsuccessfully searched for Mr. Grande. Nervous, anxious, and terrified, Rosa, Rigoberto, Luis Miguel and Andrea entered the courtroom not knowing what to expect and, again, without representation.

Inside the courtroom, the Lopezes cautiously sat down, constantly staring at the door hoping Mr. Grande would appear. Judge Gordon presided over the court proceedings. He asked for all those without legal representation to come forward. Tentatively, the Lopezes rose and stepped forward. They told Judge Gordon that they were waiting for their attorney but that he never showed up. The Judge warned the immigrants of unscrupulous people who would try to take advantage of them. He firmly cautioned the immigrants against going to notarios, stating that there were many cases of fraud against immigrants seeking residency. "Going to a notario is like throwing your money away," he said. Judge Gordon gave the unrepresented immigrants a list of reputable attorneys. He also granted the Lopezes another extension of time to obtain legal representation.

Breathing a collective sigh of relief, the Lopezes left the courtroom; as they exited the courtroom, a man rushed toward them. He demanded to know if they were the Lopezes who were associated with Gaston. They nodded and said yes; he said he was Guy Grande. Mr. Grande ordered the Lopezes to sit down. He grabbed the folder containing their case and began reviewing it for the first time. Looking up from the documents, he said to the Lopezes, "You don't have a case. The best thing for you to do is to ask for voluntary departure." Then, as quickly as he arrived, he abruptly left. Rosa stated that his words felt like someone had punched her in the stomach. The room spun. Rosa and Rigoberto kept repeating, "*¿Que vamos hacer?*" What are we going to do?

When the Lopezes called Gaston to tell that what had transpired, he said that Mr. Grande was wrong, "I'm going to fire him and I will get you another lawyer. Everything will be okay." Repeatedly, he said, "Don't worry."

Soon after their last court date, the Lopezes decided to not return to Gaston. Using the list that Judge Gordon had given them, the Lopezes hired an attorney from One Stop Immigration.⁴¹ After looking over their case, Mr. Diamante told the Lopezes that they did not have a legitimate claim for residency. He said he was sorry but that he could not help them further their INS claim. At that moment, the Lopezes felt that all hope was gone. However, the attorney advised the Lopezes that they did have a

⁴¹ One Stop Immigration is based in Los Angeles, California.

strong case of notario fraud. He told them that he would accompany them to their next court date to explain to the judge that they would file a notario fraud case against Gaston. He encouraged the Lopezes to contact Public Counsel.

The attorney with One Stop appeared with the Lopezes before Judge Gordon. He petitioned the court for an extension of time so that the Lopezes could file a claim of fraud against a notario. Judge Gordon agreed to give the Lopezes an extension. The Lopezes sued Gaston on the grounds of notario fraud. The Lopezes had to represent themselves in small claims court, Public Counsel helped prepare the court documents. After reviewing the statements and asking questions, the judge ordered Gaston to pay the Lopezes \$3,596 for the fraud he committed against them.⁴² The Lopezes were stunned. Gaston waited until the last day to file his appeal. Judge Gordon granted the Lopezes a six-month stay to collect the judgment. He applauded their efforts in helping to stop notario fraud, but he said his hands were tied concerning their asylum application. The Lopezes had until end of January 1999 to return to immigration court to request voluntary departure.

On appeal, the court ordered Gaston to pay the \$3,596.00. The victory was bittersweet. Although they had won the case, they anticipated that collecting the money would be difficult, if not impossible. On January 26, 1999, the Lopezes appeared in immigration court, and their request for voluntary departure was granted. They had sixty days to leave the U.S.

B. The Effects of the Notario Fraud

The Lopezes found it difficult to believe that Gaston had betrayed them. They had trusted him, confided in him, and now it was clear: he lied to them, defrauded them and used them. Notario fraud is very damaging to immigrants like the Lopezes. The desperation to “get their papers fixed,” especially to adjust their children’s status, allowed the Lopezes to wholeheartedly believe Gaston without question. They, like thousands of immigrants, hoped to buy a dream. Gaston, like most notaries, knew this and took advantage of this desperation.

The Lopezes’ children greatly suffered. Luis Miguel’s, at that time was a junior at Glendale High School (GHS). His grades dramatically declined. He just stopped achieving, and depression set in. “I feel like I’m almost dead or I might as well be,” Luis Miguel sadly said. “Why should I keep

⁴² This was the amount that the Lopezes had paid Gaston for his services plus \$46 in court costs.

trying, what Gaston did to us is like a death sentence,” Luis Miguel stated. Andrea said she tries not to think of the situation, but when she does think about leaving the U.S., she feels very scared. She was only twelve at the time. What saddened her the most, was witnessing the pain, anguish and powerlessness of her parents. Andrea had been in the United States since she began kindergarten. Rigoberto said Andrea speaks about 80% English. The U.S. is her home, returning to Mexico would be like returning to a foreign country for her. When I asked her how she felt about what had happened, she had her head resting on her folded arms, which were on the table. She looked up, with tears in her eyes, she gently said, “I don’t want to go back.” Watching their children suffer has been very painful for Rosa and Rigoberto.

The Lopezes felt frustrated and scared about leaving the U.S. When I asked Rosa how it feels to be an undocumented immigrant in the U.S., she replied, “*Vivimos constantemente en terror. Tenemos miedo que nos van a recojer.*” We live in constant terror. We are afraid that they will catch us.” For nearly ten years the family has lived with knots in their guts, worry chiseled on their faces, but despite the worry, they created a home and built a community of friend and relatives.

According to Rigoberto, Gaston orchestrated this fraud with perfect precision. Knowing when the INS scheduled the interviews and court dates, Gaston collected the payments on the \$3,000 he charged, and by the time the immigrant found out that he or she did not qualify for asylum, Gaston had collected all the money.⁴³ “Notarios can say anything they want to because there is no regulation. At least lawyers can get punished if they do something wrong. But anyone can put up a letterhead, ‘notario,’ and start ripping off people and no one is there to stop them. Notarios are on every street corner,” he added.

As for the judgment the Lopezes won, Rigoberto does not feel as though he won anything. He said, “Maybe this case can help attorneys, so someone can start to regulate the notarios. Hundreds of immigrants are being defrauded and no one is doing anything about it.” He continued, “Perhaps because we [immigrants] do not have a political voice, notarios defraud people who have no residency claim as well as those who do have a legitimate claim.” His friends ask, “¿*Que ganaron?*” What did you win. The Lopezes never received any money.

⁴³ Telephone conversation with Rigoberto, December 28, 1998.

Gaston is still practicing.⁴⁴ He has not been punished. If the Lopezes return to collect the money after they have left the U.S., “*Gaston puede reportarnos y decir que estamos deportados.*” He can report us and have us deported, said Rigoberto. “*Velez nos uso y Gaston nos uso,*” Velez used us and Gaston used us, sighs Rigoberto. “*El notario comete el fraude perfecto.*” The notario commits the perfect fraud.”

II. LAWS PROHIBITING NOTARIO FRAUD AND OTHER SOLUTIONS

States have laws to regulate or prosecute notarios. Many states can use their unauthorized practice of law statutes to prosecute this type of fraud,⁴⁵ while other states can use notary statutes.⁴⁶ Some states can use statutes regulating immigration consultants to prosecute notario fraud.⁴⁷ Two states

⁴⁴ A corporationwiki profile for Gaston Corral of Consultorio Internacional, Inc. was created on 3/30/2011. <http://www.corporationwiki.com/California/Moorpark/gaston-corral/43018199.aspx>. Gaston is listed as the president of the corporation. See <http://www.corporationwiki.com/California/Moorpark/consultorio-internacional-inc/43044721.aspx> (Articles of Incorporations [Inactive]).

⁴⁵ See ABA Immigration State Law Chart, http://www.abanet.org/publicserv/immigration/state_law_chart-notarios_final.doc.pdf. States that prosecute notario fraud with UPL statutes: Alabama, ALA.CODE § 34-3-1 (2011); Alaska, ALASKA STAT. § 08.08.230 (2011); Arkansas, ARK. CODE ANN. § 16-22-501 and 4-109-103(2011) (also with Notary Statutes); Connecticut, CONN. GEN. STAT. § 51-88 (2004); Florida, FLA. STAT. § 454.23 (2011); Hawaii, HAW. REV. STAT. § 605-14 (2011); Idaho, IDAHO CODE ANN. § 3-420 (2011); Indiana, IND. CODE ANN. § 33-43-2-1 (2011); Kansas, KAN. STAT. ANN. § 21-3824 (2011); Kentucky, KY. REV. STAT. ANN. § 524.130 (2011); Louisiana, LA. REV. STAT. ANN. § 7:213 (2011); Maine, ME. REV. STAT. ANN. 4 § 807 (2011); Maryland, MD. CODE ANN., BUS. OCC. & PROF.. § 10-601 (2011); Massachusetts, MASS. GEN. LAWS ch. 221, § 46A (2001) Executive Order 455 (03-13); Minnesota, MINN. STAT. ANN. §§ 481.02 and 325E.031 (1996) (regulating immigration assistants); Mississippi, MISS. CODE ANN. § 73-3-55 (2011); Missouri, MO. REV. STAT. § 486.390 (2011); Nevada, NEV. REV. STAT. ANN. § 7.285 (2011); New Hampshire, N.H. REV. STAT. ANN. § 311:7-a (2011); North Dakota, N.D. CENT. CODE § 27-11-01 (2011); Ohio, OHIO REV. CODE ANN. § 4705.07 (2011); Pennsylvania, 42 PA. CONS. STAT. § 2524 (2011) and 18 PA. CONS. STAT. § 4913 (2011) (law prohibiting falsely holding yourself out to be a notary public); Virginia, VA. CODE ANN. §§ 4.1-3904 and 47.1-23 (2011) (Notary Statute); West Virginia, W. VA. CODE § 29C-7-201 (2011); Wisconsin, WIS. STAT. § 757.30 (2011); Wyoming, WYO. STAT. ANN. § 33-5-117 (2011).

⁴⁶ *Id.* States that can prosecute notario fraud with notary statutes: Arkansas, ARK. CODE ANN. § 4-109-103 (2011) (Notaries who advertise as “notarios” must post signs in both English and Spanish explaining that they are not “notario publicos” as that term is used in common law countries); Georgia, GA. CODE ANN. § 5-17-8.2 (1984) (Notary shall not counsel on immigration matters); Nebraska, NEB. REV. STAT. § 64-105.03 (2004) (Notary public doesn’t have power to handle immigration cases and must post signs); New Mexico, N.M. STAT. ANN. § 14-12A-15 (2003) (Cannot use the term “notario publico” at all); Oregon, OR. REV. STAT. § 194.166 (2003) (Notary does not have power to counsel on immigration matters); Texas, TEX. GOV’T CODE ANN. § 406.017 (2001) (Notary regulations); Utah, UTAH CODE ANN. § 46-1-11 (1998) (“Notaries Public Reform Act”, notaries can’t provide advice about immigration matters).

⁴⁷ *Id.* States that can prosecute notario fraud with laws that regulate immigration assistants: California, CAL. BUS. & PROF CODE § 22440-22447 (1986); (Regulates immigration consultants); Colorado, COLO. REV. STAT. ANN. § 12-55-110.3 (2004) (Cannot represent oneself as an “immigration consultant” or an “expert on immigration matters”); Illinois, 815 ILL. COMP. STAT. 505/2AA (1999) (Recognizes and regulates immigration assistants); Michigan, MICH. COMP. LAWS § 338.3451-71 (2004) (“Michigan Immigration Clerical Assistance Act”, immigration assistants can fill out government forms); Minnesota, MINN. STAT. ANN. § 325E.031(2011) (recognizes immigration assistants); New York, N.Y. GEN. BUS. LAW Article 28-C et seq. (2004) (“Immigrant Assistant Services

use unauthorized practice of immigration law statutes to prosecute notarios.⁴⁸ Even the federal government has codes that regulate who can represent an immigrant in immigration court.⁴⁹ Yet, even with this type of legislation, immigrants remain mostly unprotected against notarios.

According to some authors, one of the reasons for the rise in notario fraud is the “lack of affordable legal assistance.”⁵⁰ Some may argue for non-lawyer representation in the immigration field to help ease the “lack of affordable legal assistance.” However, Ashbrook argues against non-lawyer representation (notarios) due to the immigrant’s unfamiliarity with the language and the legal system and the immigrant’s confusion over the term *notario público*.⁵¹ He suggests that “a comprehensive remedy involves a combined federal and state effort, with multi-tiered approaches in each entity, designed to curb the abuses that are usurping aliens’ financial resources and personal liberty.”⁵²

To have a long-term solution to notario fraud, the U.S. Citizenship and Immigration Services (USCIS) has get involved. There has to be an investigatory agency, perhaps at the state level, that works under guidance of the attorney general’s office or district attorney’s office. The various agencies involved in such an endeavor would share resources to investigate and gather evidence to prosecute notarios for their crimes against vulnerable immigrants.⁵³ Others argue that eliminating notario fraud may not be possible, especially if the consumer demand is present, yet the legal profession should begin to “initiate a broad-scale consumer education campaign, enforce consumer protection laws and regulate.”⁵⁴

In April 2009, Rep. Yvette Clarke, the Chairwoman of the Homeland

Act”, recognizes immigration assistants); North Carolina, 2005 N.C. SESS. LAWS 671 (repealed N.C.G.S.A. § 10A-9) (non-attorney and non-BIA accredited consultant cannot advertise as an “immigration consultant”); Tennessee, TENN. CODE ANN. § 8-16-402 (2002) (Cannot represent yourself as a *notario publico* and offer immigration services); Washington, WASH. REV. CODE § 19.154.010-.902 (1999) (Regulates immigrant assistants).

⁴⁸ See *id.* States that prosecute notario fraud with unauthorized practice of immigration law statutes: Arizona, ARIZ. REV. STAT. § 12-2701 et seq. (2002) (Unauthorized practice of immigration law is a class 6 felony); New Jersey, N.J. STAT. ANN. § 2C:21-31 (Supp. 2003) (Specific statute on unauthorized practice of immigration law, contains exception for people accredited as representatives under federal law pursuant to 8 C.F.R. § 292.2(2011)).

⁴⁹ See *e.g.*, 8 C.F.R. §§ 292.2 - 292.3 (2011).

⁵⁰ See Loonin, Michon, & Kinnecome, *supra* note 27, at 329.

⁵¹ Alexandra M. Ashbrook, *The Unauthorized Practice of Law in Immigration: Examining the Propriety of Non-Lawyer Representation*, 5 GEO. J. LEGAL ETHICS 237, 249 (1991).

⁵² *Id.* at 274-75.

⁵³ Mr. Suriel suggested these solutions during a telephone conversation, December 30, 1999. When I spoke with him in the spring of 2011, Mr. Suriel was disheartened and stated that things have only gotten worst, especially in Arizona where strong anti-immigrant sentiments had been demonstrated in recent anti-immigrant laws.

⁵⁴ Solis, *supra* note 30.

Security Subcommittee on Emerging Threats, Cybersecurity and Science and Technology introduced the “**Immigration Fraud Prevention Act of 2009**” (H. R. 1992) (the Act).⁵⁵ “The bill would make it a federal crime to exploit people, citizens and non-citizens alike who are preyed on when seeking immigration assistance and penalize those who engage in such schemes.”⁵⁶ The Act would “amend title 18, United States Code, to provide penalties for individuals who engage in schemes to defraud aliens and for other purposes.”⁵⁷ Section 2 of the Act under the heading *Schemes to defraud aliens* states the following:

(a) In General- Any person who willfully and knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under Federal immigration laws or any matter the offender willfully and knowingly claims or represents is authorized by or arises under Federal immigration laws, to—

(1) defraud any person; or

(2) obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, promises,

shall be fined under this title, imprisoned not more than 5 years, or both.

(b) Misrepresentation- Any person who willfully, knowingly, and falsely represents that such person is an attorney or an accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regulations or any successor regulation to such section) in any matter arising under Federal immigration laws shall be fined under this title, imprisoned not more than 5 years, or both.⁵⁸

The Act also has a *Notice and Outreach* section which would allow the foreign national to be represented by counsel and the time necessary to secure counsel and to be provided a “current list of counsel prepared” specifically under the Act.⁵⁹ The Act also provides for a “cost-effective

⁵⁵ Ronnie Sykes, Press Release: Rep Clarke Introduces Immigration Fraud Prevention Act of 2009, at http://www.house.gov/list/press/ny11_clarke/0423093.shtml

⁵⁶ *Id.*

⁵⁷ Immigration Fraud Prevention Act of 2009, H.R. 1992, 111th Cong. (2009) *available at*, <http://www.govtrack.us/congress/bill.xpd?bill=h111-1992> (This bill never became law but it could be reintroduced in another session).

⁵⁸ *Id.*

⁵⁹ *Id.*

outreach” program to educate immigrant communities “regarding who may provide legal services and representation to aliens in immigration proceedings.”⁶⁰ The purpose of the program is “to prevent aliens from being subjected to fraud by immigration consultants, visa consultants, and other individuals who are not authorized to provide legal services or representation to aliens.”⁶¹ Unfortunately, this bill never became law, but now is the time to reintroduce it and protect one of our most vulnerable communities that has been victimized for much too long.⁶²

David Zetoony has been fighting notaries and winning. Zetoony is a consumer protection attorney, but he began using consumer protection laws, also known as “baby FTC” statutes, that allow private actions against notaries, particularly in immigration matters.⁶³ He recruited immigration attorneys who were interested but were unfamiliar with the FTC laws. With the help of fellow associate Daniel O’Connor, Zetoony eventually shut down two notaries from operating their businesses. He is pursuing other actions against notaries in other states. Zetoony and Catholic Charities in Washington, D.C. petitioned the FTC to pursue “its own enforcement initiatives against notaries.”⁶⁴

Former ABA President Stephen Zack commended the FTC’s prosecution of notaries, stating, “The Federal Trade Commission should be applauded for aggressively and creatively pursuing the unauthorized practice of immigration law and notario fraud. The FTC’s actions send a strong signal that our country will not tolerate when those seeking legal help are, instead, being hurt. The American Bar Association strongly supports pursuing those engaging in notario fraud, and will continue our own efforts to educate and protect the vulnerable.”⁶⁵

CONCLUSION

The Lopezes are heroes. They stood up against a widespread problem and won. They had the courage to share their story to help others: other immigrants as well as the legal profession. Notario fraud devastates the

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See President Zack Statement Re: FTC’s Recent Prosecution Targeting Online Immigration Fraud, at <http://www.abanow.org/2011/02/president-zack-statement-re-ftcs-recent-prosecution-targeting-online-immigration-fraud/>

⁶³ See Filisko, *supra* note 4.

⁶⁴ *Id.*

⁶⁵ *Id.* See also, ABA Fight Notario Fraud, at http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud.html.

lives of desperate people. Notarios know that immigrants have little to no power to pursue a legal claim against them. Yet, the Lopezes proved in court, that what a notario did was wrong, but unfortunately, he never paid any consequences, literally or figuratively. Federal and State agencies need to work in tandem to combat this insidious crime against the immigrant population. Sadly, countless victims do not report this crime, primarily because they don't think anyone cares or if they do report the crime, the notario will end up getting away with this "perfect" crime and they, the immigrants, risk the chance of being removed from the United States. This Article attempts to educate the public on notario fraud and its effects, as well as recommends solutions, but more needs to be done. My hope is that those who read this article and uncover the human and other costs of notario fraud will take action to help put a stop to it. This crime has been under the radar for way too long.

